



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 1, 1998

Ms. Kristi A. Taylor
Neiman & Barnes, L.L.P.
P.O. Box 777
Lewisville, Texas 75067

OR98-1371

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115703.

The City of Lewisville (the "city") received a request for offense report no. 98-978. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Seventy-fifth Legislature passed House Bill 1550¹ which amends the Family Code. Relatedly Open Records Decision No. 644 (1996) holds that section 58.007 of the Family Code does not make confidential juvenile law enforcement records concerning juvenile conduct occurring on or after January 1, 1996, that are maintained by law enforcement agencies. Juvenile offender records held by law enforcement agencies are now expressly confidential under section 58.007(c) of the Family Code. The relevant language of amended Family Code section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

(1) kept separate from adult files and records, and

(2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

¹Act of June 2, 1997, H.B. 1550, 75th Leg., R.S.

Open Records Decision No. 644 (1996) still applies to records concerning juvenile conduct that occurred from January 1, 1996, to August 31, 1997. Section 58.007(c) of the Family Code only applies to juvenile law enforcement records concerning juvenile conduct occurring on or after September 1, 1997, that are maintained by law enforcement agencies. Juvenile law enforcement records concerning conduct that occurred before January 1, 1996, are governed by former section 51.14(d) of the Family Code, which is continued in effect for that purpose.²

Here, the requested offense report, 98-978, involves juvenile conduct that occurred on January 26, 1998. Thus, section 58.007(c) of the Family Code, as amended, applies to offense report number 98-978. Accordingly, you must withhold this report under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We now address your claimed exception under section 552.108 of the Government Code for the remaining requested reports. Section 552.108 provides, in part:

Initially, we note that among the records you have submitted to our office for review you included arrest warrants as well as forms designated as "Magistrate Warnings and Arraignment." If the submitted documents have been filed with a court, they are part of the public record and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding) (if documents are part of public record they cannot be withheld under section 552.108). If, however, the documents have not been filed with a court, we will consider whether the remaining records are protected from disclosure by section 552.108 of the Government Code.

Section 552.108 of the Government Code, in part, reads as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

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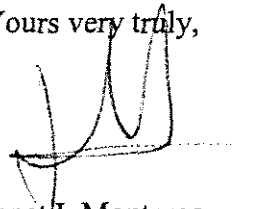
²Act of June 2, 1997, H.B. 1550, 75th Leg., R.S.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

See Gov't Code § 552.108. You state that section 552.108 is applicable to the submitted information. From your brief, we understand that the submitted records relate to "an ongoing criminal investigation." As the requested records relate to a pending criminal investigation or prosecution, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. Therefore, except as noted above, the remaining information may be withheld pursuant to section 552.108(a)(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', written over a horizontal line.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 115703

Enclosures: Submitted documents